Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of	)	
	)	
Expanding Flexible Use of the 3.7 to 4.2 GHz Band	)	GN Docket No. 18-122
	)	
	)	

ORDER DENYING STAY PETITION

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Adopted: June 10, 2020 **Released: June 10, 2020**

By the Chief, Wireless Telecommunications Bureau:

I. INTRODUCTION

1. On May 15, 2020, ABS Global Ltd., Empresa Argentina de Soluciones Satelitales S.A., and Hispamar Satélites S.A., and Hispasat S.A. filed a Joint Petition for Stay Pending Judicial Review[1] of the Commission's Report and Order and Order of Proposed Modification in the above-captioned proceeding.[2] Petitioners ask the Commission to stay the C-band auction and transition process while their challenges to the *3.7 GHz Report and Order* are pending before the United States Court of Appeals for the District of Columbia Circuit.[3] We deny the Stay Petition.[4]

II. BACKGROUND

2. In the *3.7 GHz Report and Order*, the Commission took a "critical step in advancing

[1] Joint Petition for Stay of Report and Order and Order of Proposed Modification Pending Judicial Review of ABS Global Ltd. (ABS), Empresa Argentina de Soluciones Satelitales S.A. (ARSAT), Hispamar Satélites S.A., and Hispasat S.A. (collectively, Hispasat), GN Docket No. 18-122 (filed May 15, 2020) (Stay Petition).

[2] *Expanding Flexible Use of the 3.7-4.2 GHz Band*, GN Docket No. 18-122, Report and Order and Order of Proposed Modification, 35 FCC Rcd 2343 (2020) (*3.7 GHz Report and Order*). In the *3.7 GHz Report and Order*, the FCC referred to ABS, Hispasat S.A., and Claro S.A., which is not a party to the Stay Petition, as the "Small Satellite Operators" or "SSOs."

[3] *See* Notice of Appeal, *ABS Global Ltd. v. FCC*, No. 20-1146 (D.C. Cir. filed May 1, 2020); Protective Petition for Review, *ABS Global Ltd. v. FCC*, No. 20-1147 (D.C. Cir. filed May 1, 2020).

[4] We also deny Petitioners' request to "extend by 45 days the effective date of rules currently scheduled to take effect June 22, 2020." Reply in Support of Stay Petition, GN Docket No. 18-122 (filed June 1, 2020).

American leadership" in the fifth generation of wireless technology (5G) by repurposing for flexible use 280 megahertz of mid-band spectrum in the 3.7-4.2 GHz band, known as the C-band.[5] C-band incumbents, primarily Fixed Satellite Service (FSS) space station operators that provide signals to earth stations for broadcast programming and telephone and data services, will be migrated into the upper 200 megahertz of the C-band, where the Commission found that they will be able to provide "the same services as they are currently providing across the full 500 megahertz of C-band spectrum."[6] The agency relied on its authority under Section 316 of the Communications Act of 1934, as amended, to modify C-band incumbents' spectrum access rights.[7] The Commission scheduled a public auction for new, flexible-use licenses beginning on December 8, 2020.[8]

3. To make the repurposed C-band spectrum available "as quickly as possible,"[9] the Commission established an aggressive transition schedule.[10] Consistent with its *Emerging Technologies* framework,[11] which "allows for new licensees to incentivize a swift transition while requiring those licensees to hold incumbents harmless during the transition,"[12] the Commission also provided for payments to incumbent space station operators to voluntarily agree to accelerate clearing of the lower 300 megahertz of the C-band and to reimburse the costs of clearing.[13] The first and second Accelerated Relocation Deadlines are December 5, 2021 (Phase I) and December 5, 2023 (Phase II), respectively.[14] The Commission set the total amount of accelerated relocation payments at $9.7 billion, which will be allocated based on an estimate of each operator's relative contribution to the transition effort and distributed after successful completion of each Accelerated Relocation Deadline.[15] Such payments, the Commission reasoned, would "fairly incentivize[] incumbent space station operators to expedite the transition while increasing the value of the entire transition effort for the American public."[16]

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[5] *3.7 GHz Report and Order*, 35 FCC Rcd at 2345, para. 4.

[6] *Id.* at 2353, para. 20; *see id.* at 2397, para. 130; *id*. at 2399-2400, para. 135 & n.382; *id*. at 2402, para. 140. The Commission reserved a 20-megahertz guard band from 3.98 to 4.0 GHz. *Id.* at 2357-58, para. 30.

[7] 47 U.S.C. § 316; *see 3.7 GHz Report and Order*, 35 FCC Rcd at 2394-2404, paras. 125-144. C-band space station operators "share the same non-exclusive rights to transmit nationwide." *Id.* at 2366, para. 44; *see id*. at 2348, para. 9 (space station operators "are authorized to use all 500 megahertz exclusively at any orbital slot, but non-exclusively in terms of geographic coverage. Therefore, multiple FSS incumbents using satellites deployed at different locations in the geostationary orbit can transmit within overlapping geographic boundaries."). Satellites "that serve or transmit signals into the U.S. market also may be providing service to other countries." *Id.*

[8] *Id.* at 2345, para. 4; *see id.* at 2353-2390, paras. 22-109.

[9] *Id.* at 2353, para. 20.

[10] *See id.* at 2391-2463, paras. 110-320.

[11] *See id.* at 2355-56, para. 27 n.78.

[12] *Id*. at 2391, para. 111; *see id.* at 2353, para. 21.

[13] *3.7 GHz Report and Order*, 35 FCC Rcd at 2415-46, paras. 178-254. As the *3.7 GHz Report and Order* explains in detail, relocation payments will reimburse incumbents for the costs they incur to clear their operations from the lower 300 megahertz of the C-band; accelerated relocation payments are non-cost-based payments to encourage operators to do so on an accelerated basis.

[14] *Id*. at 2408, para. 155. The Final Relocation Deadline is December 5, 2025. *Id.*

[15] *Id*. at 2431-42, paras. 211-40. The FCC also provided for transition logistics in the *3.7 GHz Report and Order*, including independent parties to administer the payment process and to coordinate the transition. *Id.* at 2446-61, paras. 255-317.

[16] *Id*. 2432, para. 214. All eligible space station operators have now elected to relocate on an accelerated basis. *See Wireless Telecommunications Bureau Announces Accelerated Clearing in the 3.7-4.2 GHz Band*, GN Docket No. 18-122, Public Notice, DA 20-578 (rel. June 1, 2020) (*Accelerated Clearing Public Notice*).

4. Petitioners are international satellite operators with Commission authorizations for C-band use.[17] Petitioners are ineligible for relocation and accelerated relocation payments because they have no existing operations to clear: the record reflects that Petitioners do not provide any services via C-band satellite transmission to incumbent earth stations in the contiguous United States.[18] The purpose of such payments is to compensate satellite operators "that provide C-band services to *existing* U.S. customers using *incumbent* U.S. earth stations that will need to be transitioned to the upper portion of the band or otherwise accommodated in order to avoid harmful interference from new flexible-use operations."[19] Petitioners argued that they should be compensated for the value of future business opportunities.[20] The Commission, however, found that satellite operators "will be able not only to maintain their current level of service after the transition, but to potentially serve new clients by employing point technology and adopting other network efficiencies," and that compensating them for speculative claims of future loss would not serve the public interest.[21]

5. In their Stay Petition, Petitioners argue that the *3.7 GHz Report and Order* will trigger a chain of events—beginning with the May 29, 2020 election by eligible space station operators to relocate on an accelerated basis[22]—that may be irreversible and that will harm them by benefiting competing space station operators that are eligible for relocation and accelerated relocation payments and depriving them of spectrum access rights without compensation. On the merits, they argue that the Commission exceeded its authority to modify their spectrum access rights, allocated too much money available to certain space station incumbents in the form of accelerated relocation payments and reimbursement of relocation costs associated with new satellites, and arbitrarily excluded Petitioners from receiving any relocation payments. Comments were filed on May 27, 2020, and replies were filed on June 1, 2020.

III. DISCUSSION

6. In determining whether to stay the effectiveness of one of its orders, the Commission applies the traditional four-factor test, under which the party requesting a stay must show that: (1) it is likely to prevail on the merits; (2) it will suffer irreparable harm absent the grant of preliminary relief; (3) other parties will not be harmed if the stay is granted; and (4) the public interest would favor grant of the stay.[23] "A stay is an 'intrusion into the ordinary processes of administration and judicial review,' … and accordingly 'is not a matter of right, even if irreparable injury might otherwise result'" to the movant.[24]

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[17] Specifically, ABS is a Bermuda company owned by various "investment vehicles" and a "new entrant in the U.S. satellite market." Corporate Disclosure Statement, *ABS Global Ltd. v. FCC*, No. 20-1146 at 1 (D.C. Cir. filed May 1, 2020); Stay Pet., Attachment A, Declaration of James B. Frownfelter at para. 5 ("Frownfelter Decl."). Hispasat S.A. is a Spanish sociedad anónima, and its affiliate, Hispamar Satélites S.A., operates Hispasat satellites in Brazil. *3.7 GHz Report and Order*, 35 FCC Rcd at 2348, n.30. ARSAT is an Argentinian sociedad anónima authorized to operate one satellite in the C-band under a grant of market access to serve the United States. *Id.*

[18] *3.7 GHz Report and Order*, 35 FCC Rcd at 2398-99, 2401-02, 2423-24, 2442-45, paras. 134 n.382 and accompanying text, 139, 196, 241-249.

[19] *Id.* at 2442, para. 241 (emphasis in original).

[20] *Id.* at 2423-24, para. 196.

[21] *Id.* Larger satellite operators—as well as more than a dozen large C-band users—confirmed that they can continue existing operations uninterrupted using 200 megahertz. *Id.* at 2397, para. 130. Petitioners themselves represented that they would be able to clear the lower 300 megahertz "through the use of non-proprietary, readily available compression technology." *Id.* at 2359-60, para. 32 & n.103 (internal quotations omitted); *see id.* at 2397, para. 130 & n.368.

[22] *Accelerated Clearing Public Notice*.

[23] *Washington Metro. Transit Comm'n v. Holiday Tours, Inc.*, 559 F.2d 841, 843 (D.C. Cir. 1977); *Virginia Petroleum Jobbers Ass'n v. FPC*, 259 F.2d 921, 925 (D.C. Cir. 1958) (per curiam).

[24] *Nken v. Holder*, 556 US 418, 427 (2009) (internal citations omitted).

"The party requesting a stay bears the burden of showing that the circumstances justify an exercise of that discretion."[25] Petitioners have failed to make the required showing for this extraordinary equitable relief.

A. Petitioners Have Not Shown That They Will Suffer Irreparable Harm.

7. To establish irreparable harm, a moving party must show that it will suffer injury that is "'both certain and great,' 'actual and not theoretical,' 'beyond remediation,' and 'of such *imminence* that there is a present need for equitable relief to prevent irreparable harm.'"[26] The harm that Petitioners allege is not imminent, is conjectural, and consists of economic injuries that are not severe enough to be cognizable as irreparable harm.

8. *First*, the harm that Petitioners allege is remote rather than imminent.[27] The *3.7 GHz Report and Order* will not have any direct impact on Petitioners before the Final Relocation Deadline of December 5, 2025.[28] Petitioners allege that they will be harmed indirectly by accelerated relocation payments to competing space station operators, and by reimbursement of competing operators' relocation costs related to new satellites.[29] But no accelerated relocation payments are due until *after* eligible space station operators demonstrate that they have met the December 5, 2021 and December 5, 2023 Accelerated Relocation Deadlines.[30] The lion's share of accelerated relocation payments—over 75 percent—will not be due until after eligible space station operators meet the December 2023 deadline.[31] Reimbursement of relocation costs, meanwhile, may begin only once the auction is complete, new licenses are issued, and new licensees make payments to the Relocation Payment Clearinghouse.[32] Based on the schedules for recent Commission auctions, it is likely that such payments would not be due until between July and October of 2021.[33] The record also reflects that no new satellites are needed to meet the

[25] *Id.* at 433-34.

[26] *Mexichem Specialty Resins, Inc. v. EPA*, 787 F.3d 544, 555 (D.C. Cir. 2015) (emphasis in original) (internal citations omitted); *Chaplaincy of Full Gospel Churches v. England*, 454 F.3d 290, 297 (D.C. Cir. 2006).

[27] CTIA also points out that, "by its own telling, ABS's asserted harm is rooted in a series of Commission actions taken years ago—actions that it failed to challenge at the time." CTIA Opposition to Stay Petition in GN Docket No. 18-122 at 12 (May 27, 2020) at 14; *see* Frownfelter Decl. paras. 13-14 (arguing the FCC's August 3, 2017 freeze on future development of C-Band satellite service "stopped ABS in its tracks right at the start of its market entry process").

[28] *3.7 GHz Report and Order* at 2408-09, 2410, paras. 155, 160. Due to their lack of meaningful U.S. business, meeting that deadline should require little advance work for Petitioners. *See infra* para. 25.

[29] *See* Stay Pet. at 25-28.

[30] *3.7 GHz Report and Order* at 2408-09, 2414, paras. 155, 171; *see* CTIA Opp. at 15 n.68 and accompanying text.

[31] *3.7 GHz Report and Order* at 2408-09, 2414, paras. 155, 171.

[32] *See id.* at 2448, paras. 263-64 (payments by new licensees due 30 days after receipt of invoice from payment administrator).

[33] For comparable recent auctions, bidding in Auction 102 began March 14, 2019. https://www.fcc.gov/auction/102. New licenses were issued—that is, the Commission granted winning bidders' long-form license applications—between December 11, 2019 and January 22, 2020. *Id.* Thus, roughly nine months passed between commencement of bidding and the issuance of new licenses. The timeframe for Auction 103 was about six months (bidding commenced December 10, 2019, and most new licenses were issued June 4, 2020 (https://www.fcc.gov/auction/103), and for Auction 101 about 12 months (bidding commenced November 14, 2018, and new licenses were issued between October 2 and December 11, 2019, https://www.fcc.gov/auction/101), less about four months associated with a unique need to coordinate with the conduct of Auction 102. Applying that six-to-nine-month timeframe to the upcoming C-band auction, in which bidding will commence December 8, 2020, plus 30 days for new licensees to make payments to the payment administrator, *see 3.7 GHz Report and Order* at 2448, paras. 263-64, relocation payments are unlikely to be disbursed before July to October of 2021.

Phase I Accelerated Relocation Deadline in December 2021.[34] Furthermore, requests for reimbursement of relocation costs related to new satellites are likely to require complex cost allocations that may take longer to review and process.[35] Petitioners' claimed competitive injuries also rest on "a chain of assumptions about the state of the satellite marketplace years from now."[36] In sum, the harms that Petitioners allege will not occur until well over a year from now at the earliest. Thus, they are not "of such imminence that there is a 'clear and present need' for equitable relief to prevent irreparable harm.'"[37]

9. *Second*, the alleged harm is speculative. Even if Petitioners prevail in court, they argue, competing satellite operators "will claim entitlement" to payments because the *3.7 GHz Report and Order* "provides no clear mechanism to rescind" funding commitments, and makes operator elections to relocate on an accelerated basis "irrevocable."[38] These concerns are unfounded. What is "irrevocable" under the *3.7 GHz Report and Order* is an operator's commitment to meet the Accelerated Relocation Deadlines. As Verizon argues, "in the unlikely event that [Petitioners] were to prevail on their appeal, the Commission would have 'broad authority' to 'undo what is wrongfully done by virtue of its order.'"[39]

10. The same goes for Petitioners' argument that they cannot be compensated for lost spectrum access rights once the auction is held because new licensees might balk at payment obligations that are not specified in the *3.7 GHz Report and Order*.[40] Petitioners point to disagreement among commenters regarding who would pay them if they were to persuade the Court that they are entitled to compensation,[41] but the *3.7 GHz Report and Order* makes clears that new licensees are responsible for any unanticipated funding requirements.[42] Petitioners also claim that their rights could not be restored

[34] *See 3.7 GHz Report and Order* at 2360-61, para. 35 (citing the C-Band Alliance's representation that they can clear the 100 MHz needed to meet the first accelerated relocation deadline *without* launching any new satellites).

[35] *See id.* at 2422-23, para. 194 ("[I]f an incumbent builds additional functionalities into replacement equipment that are not needed to facilitate the swift transition of the band, it must reasonably allocate the incremental costs of such additional functionalities to itself and only seek reimbursement for the costs reasonably allocated to the needed relocation.").

[36] CTIA Opp. at 15-16.

[37] *Wisc. Gas Co. v. FERC*, 758 F.2d at 669, 674 (D.C. Cir. 1985); *See W. Watersheds Project v. BLM*, 774 F. Supp. 2d 1089, 1102 (D. Nev. 2011), *aff'd* 443 F. App'x 278 (9th Cir. 2011) ("initial stages of development" of challenged project posed "no threat," and the claimed injury would not arise until project began operations a year later, so there was "no risk of irreparable harm" before a decision on the merits could be reached); *Teva Pharms. USA, Inc. v. FDA*, 404 F. Supp. 2d 243, 246 (D.D.C. 2005) (when "harm is months away" it "is simply too early" and there is no irreparable injury).

[38] Stay Pet. at 25-26; *see* Frownfelter Decl. ¶ 21 (competitive injuries will occur "if the largest operators become irrevocably entitled to receive billions of dollars on top of their actual costs—*plus* a new generation of free, federally-funded satellites—while we receive nothing for our loss of spectrum."). Petitioners do not explain, and it is not at all evident, what the legal basis would be for any such claims for payment if the *3.7 GHz Report and Order* were vacated.

[39] Verizon Opposition to Stay Pet. in GN Docket No. 18-122 at 3, n.13 and accompanying text (filed May 27, 2020) (quoting *TNA Merch. Projects, Inc. v. FERC*, 857 F.3d 354, 361 (D.C. Cir. 2017)); *see id.* at 3-4 and nn.14-15 (citing cases); *Verizon Tel. Cos. v. FCC*, 269 F.3d 1098, 1110, 1112 (D.C. Cir. 2001) ("administrative agencies have *greater* discretion to impose their rulings retroactively when they do so in response to judicial review, that is, when the purpose of retroactive application is to rectify legal mistakes identified by a federal court.") (emphasis added).

[40] Stay Pet. at 29.

[41] Petitioners' Reply at 4-5, 21-22.

[42] *3.7 GHz Report and Order* at 2428, para. 205. Petitioners provide no support for their conjecture that such requirements might exceed the value that winning bidders place on new licenses. Stay Pet. at 29; *cf. 3.7 GHz Report and Order* at 2431, para. 212 n.574 (citing one estimate that the C-band auction will generate between $43 and $77 (continued….)

once the auction is held because new licenses will be assigned for use of the lower portion of the C-band that will interfere with satellite operations.[43] Again, however, if Petitioners were to prevail in challenging the Commission's authority, then the Court could order the Commission to rescind the new licenses.[44] "[T]he Commission has successfully unwound judicially invalidated auctions before."[45] In short, the premise on which Petitioners' injury claims rest—that the auction and transition process that the *3.7 GHz Report and Order* sets in motion cannot be undone absent a stay—is unfounded.

11. Petitioners effectively concede the Commission's authority "to retroactively correct its own legal mistakes" in their Reply,[46] instead focusing on alleged "practical … difficulties," including in particular "retracting funds from satellite operators."[47] But even if Petitioners were to prevail in court, no such difficulties are likely to arise. As stated above, no payments are likely to be disbursed for a year or more, and Petitioners' appeal can be decided long before the majority of the payments are disbursed. Petitioners also contend that the C-band auction would be more difficult to unwind than Auction No. 35,[48] but they identify no case—and we are aware of none—in which the agency or a court has stayed a Commission auction because it might be difficult to unwind.[49] Petitioners also contend that "the presumption of retroactivity" that attaches to judicial decisions "could give way where reliance interests are at stake."[50] But those reliance interests are not controlling, and any claims of detrimental reliance by space station operators would not encompass the accelerated relocation payments that are Petitioners' main target.[51]

12. *Third*, the harm that Petitioners allege simply does not rise to the level of irreparable injury. "Where the injuries alleged are purely financial or economic, the barrier to proving irreparable injury is higher still, for it is 'well settled that economic loss does not, in and of itself, constitute irreparable harm.'"[52] Petitioners' claimed injuries are purely economic.[53] "Recoverable monetary loss

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billion in total proceeds). Moreover, the alternative approach that Petitioners advocate (which would reduce acceleration payments to $2.2 billion and pay Petitioners $1.2 billion for lost spectrum access rights) would *reduce*, not increase, new licensees' total payment obligations to incumbents.

[43] Stay Pet. at 29-30.

[44] Indeed, if Petitioners were to prevail in challenging the FCC's exercise of license modification authority and the Court were to vacate the *3.7 GHz Report and Order*, the *3.7 GHz Report and Order*'s reallocation of the 3.7-3.98 GHz band from satellite to terrestrial use and authorization of new licenses in that band would be automatically invalidated.

[45] Verizon Opp. at 4 (discussing FCC actions in 2002 to unwind Auction No. 35 after the D.C. Circuit vacated the agency's cancellation of licenses held by NextWave).

[46] *Verizon*, 269 F.3d at 1111.

[47] Petitioners' Reply at 5; *see id.* at 23-24.

[48] Petitioners' Reply at 22-23.

[49] *Cf. FCC v. Radiofone, Inc.*, 516 U.S. 1301, 1301 (1995) (Stevens, J., in chambers) ("allowing the national auction to go forward will not defeat the power of the Court of Appeals to grant appropriate relief in the event that [movants] overcome[] the presumption of validity that supports the FCC regulations and prevail[] on the merits.").

[50] Petitioners' Reply at 23-24.

[51] *See 3.7 GHz Report and Order*, 35 FCC Rcd at 2408, para. 155; *cf. Public Service Co. of Colorado v. FERC*, 91 F.3d 1478, 1490 (D.C. Cir. 1996) (no detrimental reliance where "neither party has even roughly quantified the harm (*e.g.,* the expenditures made and lost in detrimental reliance …) that the producers might suffer should they have to refund the full amount that they unlawfully collected.").

[52] *Mexichem*, 787 F.3d at 555 (quoting *Wisc. Gas*, 758 F.2d at 674).

may constitute irreparable harm only where the loss threatens the very existence of the movant's business."[54] Conceding the point, Petitioners argue that economic injuries that are unrecoverable can constitute irreparable harm if they have a "serious" effect on the moving party.[55] But as set forth above, Petitioners have not shown that their claimed injuries are unrecoverable. In any event, the *3.7 GHz Report and Order* explained why Petitioners' claims that they have made "vast investments to enter the U.S. market to provide international satellite links that include the U.S. market" were unpersuasive.[56]

13. Petitioners have not come close to demonstrating an existential threat to their businesses. The record reflects that their business is primarily, if not exclusively, outside the United States.[57] "As non-U.S. companies providing 'little to no service in the contiguous United States today,' the bulk of Petitioners' revenues are derived from services they provide to overseas clients and thus are unaffected by the *Order*'s repurposing of C-band spectrum."[58] ABS, for example, is a "global operator" with aspirations to "exchange data, video, and other information between the United States and regions where ABS has established market share."[59] ABS's one satellite capable of serving the United States "is positioned just south of the Ivory Coast of northwest Africa," and targets "all or most of the South Atlantic Ocean, Africa, the Middle East, Europe, and South America," whereas it provides "only edge coverage to portions of the Eastern United States."[60] Hispasat has leased nearly all of the capacity on the only satellite it has that could provide coverage to the United States to clients outside the United States since the satellite's launch in 2013.[61] And "there is no evidence that [ARSAT] provides any service to the contiguous United States."[62] Because Petitioners provide little or no service to United States customers using C-band spectrum, any economic losses they may suffer as a result of the *3.7 GHz Report and Order* "are, on a practical level, *de minimis*."[63] As such, they are not cognizable as irreparable harm under the D.C. Circuit's high standard.

14. PSSI Global argues that it will also suffer irreparable harm absent a stay.[64] PSSI

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[53] *See* Stay Pet. at 24-30; CTIA Opp. at 12 (Petitioners "rely on purely economic losses, as is clear from their own supporting declarations").

[54] *Wisc. Gas*, 758 F.2d at 674.

[55] Petitioners' Reply at 31 (internal quotations and citations omitted).

[56] *Id.* at 5; *see 3.7 GHz Report and Order* at 2401, 2442-45, paras. 139 n.393, 241 n.625, 242-49. And to the extent that Petitioners argue the *3.7 GHz Report and Order* creates uncertainty for their business plans, *see* Stay Pet. at 27 (arguing the *3.7 GHz Report and Order* will make it difficult to raise capital needed to finance expansion plans), grant of a stay would provide them with no relief, as any such uncertainty will persist until the Court rules on the merits.

[57] *See LG Elecs., USA, Inc. v. Dep't of Energy*, 679 F.Supp.2d 18, 35-36 (D.D.C. 2010) ("the financial impact [the plaintiff] claims it will suffer does not rise to the level of irreparable harm" because that impact represents only "a minuscule portion of the company's worldwide revenues.").

[58] CTIA Opp. at 11 n.42 (quoting *3.7 GHz Report and Order* at 2399-2400, para. 135).

[59] Frownfelter Decl. ¶ 6.

[60] *3.7 GHz Report and Order* at 2444-2445, para. 248; *see infra* n.125 and accompanying text.

[61] CTIA Opp. at 12 (citing Stay Pet., Attach. B (Declaration of Miguel Ángel Panduro) at paras. 7-9).

[62] *See 3.7 GHz Report and Order* at 2400, para. 135 n.382. ARSAT never responded to the Commission's request for information from C-band satellite operators. *Id.* at 2442, para. 241, n.625.

[63] *Id.* at 2401-02, para. 139.

[64] Comments of PSSI Global on SSO Joint Petition for Stay in GN Docket 18-122 (filed May 27, 2020). Although PSSI filed comments in support of the Stay Petition, it did not move for a stay. PSSI also has challenged the *3.7 GHz Report and Order* in court. Notice of Appeal, *PSSI Global Services, L.L.C. v. FCC*, No. 20-1142 (D.C. Cir.

(continued….)

contends that the *3.7 GHz Report and Order* will "accelerate" a decline in available occasional use transponder inventory and of C-band spectrum.[65] PSSI further alleges that harmful interference from 5G operations and the lack of antenna filters will "cause catastrophic failure" to its mobile earth station operations.[66] Like Petitioners, PSSI has not shown that the harms it alleges are either imminent or irreparable if PSSI prevails in Court. Indeed, since 5G operations cannot commence until after FSS operations have been cleared from the band, the alleged harm would not occur until after the December 2021 Accelerated Relocation Deadline, at the earliest.

15. Petitioners' failure to show irreparable harm would be "grounds for refusing to issue a preliminary injunction, even if the other three factors entering the calculus merit such relief."[67] However, the three remaining factors also militate against grant of a stay.

B. Petitioners Have Not Shown a Likelihood of Success on the Merits.

16. Petitioners fail to demonstrate that they are likely to succeed on the merits. The Commission addressed Petitioners' principal arguments at length in the *3.7 GHz Report and Order*, so we need not do so here.[68] The Stay Petition does not persuade us that these arguments are likely to succeed in court any more than they did before the agency.

17. *Section 316 authority*. The Commission thoroughly justified its exercise of authority under 47 U.S.C. § 316 to modify C-band satellite operators' spectrum access rights.[69] Petitioners do not challenge the Commission's judgment that its actions would serve the public interest.[70] Instead, they repeat arguments that the Commission impermissibly effected a "fundamental change" by depriving them of spectrum access rights without their consent.[71] But "[t]he D.C. Circuit has consistently upheld the Commission's authority to modify licenses where the affected licensee is able to continue providing substantially the same service following the modification."[72] The record demonstrated that Petitioners "provide little to no service in the contiguous United States today and, as such, the remaining 200 megahertz of spectrum available after the transition period exceeds any reasonable estimate of their

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filed Apr. 28, 2020); Petition for Review, *PSSI Global Services, L.L.C. v. FCC, et al.*, No. 20-1143 (D.C. Cir. filed Apr. 28, 2020).

[65] PSSI Comments at 10, 20 and attached Declaration of Robert C. Lamb ("Lamb Decl.") para. 16.

[66] PSSI Comments at 20.

[67] *Chaplaincy*, 454 F.3d at 297; *see Al Otro Lado v. Wolf*, 952 F.3d 999, 1007 (9th Cir. 2020) ("The minimum threshold showing for a stay pending appeal requires that irreparable injury is likely to occur during the period before the appeal is likely to be decided.").

[68] *See* Reply Comments of SES Americom, Inc. in GN Docket No. 18-122 at 9 n.33 and accompanying text (June 1, 2020) ("As multiple stakeholders point out, the SSOs' arguments have already been 'presented, considered, and denied by the Commission.'") (citing comments).

[69] *3.7 GHz Report and Order*, 35 FCC Rcd at 2394-2405, paras. 125-46.

[70] *Id.* at 2394-97, paras. 125-31.

[71] Stay Pet. at 10-11; *see 3.7 GHz Report and Order* at 2399-2402, paras. 135-40 (rejecting arguments of the Small Satellite Operators and others "that eliminating their right to operate and be protected from harmful interference over the lower 300 megahertz of the C-band without their consent would constitute a fundamental change" to their licenses and authorizations and "impermissibly alter their ability to expand their services to additional customers."); *see also* SES Reply at 10 (PSSI "parrots the SSOs' argument, asserting the Commission fundamentally changed the SSOs' authorizations by '[r]emov[ing] 60% of the usable spectrum.'").

[72] *3.7 GHz Report and Order* at 2399-2400, para. 135.

needs."[73]

18. Petitioners contend that other Title III provisions confirm that the Commission exceeded its Section 316 authority.[74] First, they contend that the Commission cannot revoke licenses under 47 U.S.C. § 312(a) to make room for new spectrum uses. The Commission did not revoke any licenses, however. Second, Petitioners argue that Section 303(y)'s authorization to allocate spectrum for flexible use if, among other things, "such use would not result in harmful interference among users,"[75] would be unnecessary if the Commission could simply modify licenses to make way for new uses. But the Commission's exercise of authority to repurpose a portion of the C-band did not avoid Section 303(y)'s no-interference requirement. The Commission established guard band and transition requirements to avoid interference between incumbents and new, flexible-use licensees.[76] Third, Petitioners suggest that a reverse auction under 47 U.S.C. § 309(j)(8)(G) is the appropriate mechanism for incumbents to relinquish spectrum access rights. But the Commission's reverse auction authority is discretionary,[77] and in all events is inapplicable here.[78]

19. Petitioners also contend that whether the Commission effects a "fundamental change" must be determined by the impact on rights held because the statute "says nothing about current levels of service to existing customers."[79] Petitioners' cramped interpretation is inconsistent with the "broad power" that Section 316 grants the Commission to modify licenses (short of fundamentally changing them) when it finds that doing so would serve the public interest.[80] Petitioners also complain that the Commission's functional test would allow it to eliminate virtually all spectrum access rights at any time prior to commercial rollout.[81] But the Commission found that all satellite operators would be able to provide substantially the same service after the C-band is repurposed, not just those like Petitioners with few or no United States customers.[82]

20. Petitioners argue that they will prevail because the Commission in the *3.7 GHz Report and Order* arbitrarily departed from a purported policy of expanding incumbent licensees' rights when it cannot simply migrate them, citing other proceedings.[83] The Commission did not change any existing policy.[84] Contrary to Petitioners' suggestion,[85] the Commission distinguished various other proceedings by noting that when transitioning spectrum uses, it never has expanded rights solely to enable an incumbent licensee to sell those rights to obtain compensation for the changes being made, as Petitioners suggest it should.[86] Moreover, as Verizon points out, "[t]he Commission has previously applied § 316 to

[73] *Id*.

[74] Stay Pet. at 11-12.

[75] 47 U.S.C. § 303(y).

[76] *3.7 GHz Report and Order* at 2370-71, para. 55.

[77] 47 U.S.C. § 309(j)(8)(G)(i) ("the Commission *may* encourage a licensee to relinquish voluntarily some or all of its licensed spectrum usage rights") (emphasis added).

[78] *3.7 GHz Report and Order* at 2365-66, paras. 43-44.

[79] Stay Pet. at 13.

[80] *Cal. Metro Mobile Commc'ns, Inc. v. FCC*, 365 F.3d 38, 45 (D.C. Cir. 2004).

[81] Stay Pet. at 13.

[82] *3.7 GHz Report and Order*, 35 FCC Rcd at 2397, para. 130.

[83] Stay Pet. 16-17.

[84] *3.7 GHz Report and Order* at 2391, 2423-24, paras, 111, 196 n.526 and accompanying text.

[85] Stay Pet. at 17, n.66 & accompanying text.

require licensees to reduce their spectrum usage rights and/or operate on different spectrum to serve the public interest, without compensating those licensees."[87]

21. One mobile earth station operator, PSSI, argues in support of the Stay Petition.[88] PSSI leases excess satellite transponder[89] capacity on an occasional use basis to broadcast live events.[90] It argues that the *3.7 GHz Report and Order* will "accelerate" a decline in the transponder capacity and C-band spectrum available for its occasional use,[91] and that harmful interference from 5G operations and the lack of antenna filters will "cause catastrophic failure" to its mobile earth stations.[92] These arguments lack merit. First, earth station operators like PSSI hold no licensed spectrum usage rights in the C-band.[93] Second, PSSI's contention that there will be insufficient transponders for occasional use after the transition is speculative. Although space station operators are likely to have fewer total transponders after the transition, the record reflects that customers may need fewer transponders due to more efficient spectrum use through new technologies[94] and the trend in delivery services from satellite to fiber,[95] mitigating any reduction. And if demand for transponders does begin to outpace supply, satellite operators may be able to launch additional satellites to add more transponders. Third, as SES explains, the reduction in transponders allocated to occasional use—which, PSSI acknowledges, predates the *3.7 GHz Report and Order*[96]—"flows from competitive forces impacting 'demands for transponder capacity' and 'customer reluctance to commit to future projects,'"[97] not the Commission's actions here. Last, PSSI, like all other incumbent earth station operators, may qualify to be relocated by eligible space station

(Continued from previous page)
[86] *3.7 GHz Report and Order*, 35 FCC Rcd at 2363-64, para. 40.

[87] Verizon Opp. at 14 (citing *3.7 GHz Report and Order*, 35 FCC Rcd at 2394-95, para. 126). Petitioners' asserted right to compensation for their spectrum access rights (Stay Pet. at 11-12) is irrelevant to the scope of the FCC's Section 316 authority. Nor does one satellite operator's provisional challenge of the final transition deadline have anything to do with Section 316. *See* Petitioners' Reply at 8-9.

[88] PSSI Comments at 14-17.

[89] A transponder receives and transmits radio signals. "Satellites operating in the C-band typically have 24 transponders, each with a bandwidth of 36 megahertz. Thus, the 24 transponders on a satellite use 864 megahertz of spectrum, or 364 megahertz more than the 500 megahertz available. This is the result of spectrum reuse—adjacent transponders overlap, and self-interference is avoided by using opposite polarizations." *3.7 GHz Report and Order*, 35 FCC Rcd at 2348, para. 9.

[90] PSSI Comments at 5-6.

[91] *See* PSSI Comments at 10, 20 and Lamb Decl. para. 16.

[92] PSSI Comments at 20.

[93] *See 3.7 GHz Report and Order*, 35 FCC Rcd at 2406, paras. 147-48. PSSI is a licensee only in the 5.9 GHz earth-to-space uplink band, and thus "hold[s] no 'licensed spectrum usage rights'" in the spectrum at issue here. *Id.* para. 148. If the Commission modified PSSI's license to transmit in the 5.9 GHz band by affecting its ability to receive in the C-band (which the Commission did not concede), then it found that it has ample authority "to eliminate [PSSI's] interference protection rights in the lower 300 megahertz of the [C-band], once cleared of satellite operations under our section 316 authority." *Id.*

[94] *See id.* at 2404, para. 144 ("After the transition, space station operators will still be able to use the same mechanisms to effectively achieve more capacity than the spectrum in their licenses will provide. In addition, they will be able to take advantage of new technologies to improve spectral efficiency (that will be implemented and funded by the transition), such as improved data compression and modulation techniques to further improve their spectral efficiency."); *see also id.* at 2401-04, 2422-23, 2424, paras. 139, 143-44, 194, 199.

[95] *Id.* at 2402, n.394 and accompanying text.

[96] PSSI Comments at 8-9; Lamb Decl. paras. 15-16.

[97] SES Reply at 15 (quoting Lamb Decl. paras. 14 and 19).

operators or to elect a lump sum payment that will enable it to obtain filters for its facilities.[98] PSSI does not identify any technical constraints that would prevent filters from being developed for their mobile earth stations.[99]

22. *Funding Commitments*. Petitioners argue that the accelerated relocation payments the *3.7 GHz Report and Order* provides for are unnecessary and arbitrarily high.[100] The Commission could have simply mandated accelerated relocation, they argue, and should have based accelerated relocation payments on the amount that incumbents might be willing to accept, not the amount that auction participants would be willing to pay.[101] The Commission considered and rejected these arguments in the *3.7 GHz Report and Order*.[102] Notably, Petitioners do not challenge the Commission's authority to provide for accelerated relocation payments, only the particular amount it chose.[103] Given evidence that the transition will be complex and demanding,[104] the Commission reasonably concluded that voluntary acceleration was the best approach for achieving early clearing.[105] It also explained that it had no means of reliably determining what incumbents might be willing to accept,[106] and reasonably concluded that $9.7 billion strikes an "appropriate balance" between "fairly incentiviz[ing] incumbent space station operators to expedite the transition" and "increasing the value of the entire transition effort for the American public."[107] The Commission also detailed its reasons for disagreeing with Petitioners' argument for a lower amount.[108] Such a "line-drawing exercise" involves a predictive judgment squarely within the agency's expertise.[109]

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[98] *Wireless Telecommunications Bureau Seeks Comment on Optional Lump Sum Payments for 3.7-4.2 GHz Band Incumbent Earth Station Relocation Expenses*, GN Docket No. 18-122, Public Notice, DA 20-586 (June 4, 2020).

[99] PSSI also argues that it lacked notice that the Commission would modify its licenses in the 5.9 GHz band, which it maintains are "inextricably linked" to the spectrum at issue here. PSSI Comments at 17. The Commission did not concede that it modified PSSI's licenses. *See 3.7 GHz Report and Order*, 35 FCC Rcd at 2406, para. 147. In all events, as SES states, "PSSI, like the SSOs, had notice of the transition and actively participated since 2017 in this proceeding and the predecessor proceeding." SES Reply at 11-12 (citing PSSI *ex parte* filings in GN Docket Nos. 18-122 and 17-183).

[100] Stay Pet. at 18-19.

[101] *Id.* at 19-20.

[102] *3.7 GHz Report and Order*, 35 FCC Rcd at 2434-36, paras. 220-26.

[103] Petitioners' Reply at 38 ("To be clear, the SSOs do not challenge the Commission's authority to provide for some relocation incentive payments."); *see 3.7 GHz Report and Order*, 35 FCC Rcd at 2420-21, para. 190 & n.511.

[104] *See, e.g.*, *3.7 GHz Report and Order*, 35 FCC Rcd at 2436, 2454-55, paras. 227, 287, 292; *see also* CTIA Opp. at 16-17.

[105] *3.7 GHz Report and Order*, 35 FCC Rcd at 2436, para. 226 ("the smaller the payment the greater the risk that such a payment will be insufficient to incent earlier clearing."); *see id.* at 2434, para. 221 (noting that ordering incumbents to meet deadlines presented no problem for the Small Satellite Operators because they have few or no customers to relocate).

[106] *See id.* at 2435, para. 226 ("eligible space station operators have had every incentive not to disclose precisely how high an accelerated relocation payment must be for them to accept it").

[107] *Id.* at 2432-34, paras. 214, 219.

[108] *Id.* at 2434-36, paras. 220-26.

[109] *Id.* at 2433-34, para. 219. *See* Verizon Opp. at 15 ("In deciding how to convert spectrum to new uses, the Commission is entitled to 'the greatest deference' in balancing the protection of existing uses while enabling new services and technologies to serve the public interest.") (quoting *Telocator Network of Am. v. FCC*, 691 F.2d 525, 538 (D.C. Cir. 1982)).

23. Petitioners also challenge the Commission's decision to reimburse eligible space station operators for the costs of new satellites needed to relocate existing operations, contending that operators planned to launch new satellites in any event.[110] The Commission made clear that the only relocation costs that will be reimbursed are those "directly attributable to" and "necessary" "as a result of" relocation.[111] The Commission reasonably stated its expectation that such costs would likely include new satellites based on the record before it.[112] As one satellite operator explains, its prior plans to launch new satellites changed substantially as a result of the *3.7 GHz Report and Order*.[113] According to Intelsat, "the transition cannot be accomplished without additional satellites [that] would not have been necessary in the next three years if Intelsat had been able to continue to make use of the full 500 MHz of C-band spectrum."[114] But like all other relocation costs, satellite-related costs will be subject to review to confirm that they are "reasonably necessary."[115]

24. Finally, Petitioners argue that the Commission arbitrarily excluded them from the *3.7 GHz Report and Order*'s payment arrangements.[116] But the Commission explained that the purpose of relocation and accelerated relocation payments would not be served by compensation for relinquished spectrum rights.[117] The purpose of such payments is to compensate satellite operators "that provide C-band services to *existing* U.S. customers using *incumbent* U.S. earth stations that will need to be transitioned to the upper portion of the band or otherwise accommodated in order to avoid harmful interference from new flexible-use operations."[118] In declining to reimburse Petitioners for the

[110] Stay Pet. at 20-21.

[111] *3.7 GHz Report and Order*, 35 FCC Rcd at 2415-16, 2422, paras. 179, 193. This includes "reasonable replacement cost for … newer equipment" with "improved functionality" only where legacy equipment cannot be replaced—not "additional functionalities … not needed to facilitate the swift transition." *Id.* 2422-23, para. 194. It does not include payment for "gold-plat[ing]." *Id.* at 2423, para. 195.

[112] *Id.* at 2425, para. 199; *see id.* at 2422-23, 2428-31, paras. 194, 206, 210 (estimating $1.28-2.5 billion in procurement and launch costs for eight to 10 satellites, including $160-250 million in capital costs).

[113] Intelsat License, LLC Opp. to Stay Pet. in GN Docket No. 18-122 at 5 (filed May 27, 2020). Previously, Intelsat explains that it planned to "densify customer content on fewer (high-performance, full-spectrum) satellites." *Id.* The Accelerated Relocation Deadlines the Commission adopted in the *3.7 GHz Report and Order* "create the immediate need to 'spread' programming in the upper 200 MHz across all current cable-/broadcast-penetrated satellites, rather than pursuing the densification strategy (fewer orbital locations utilizing all 500 MHz) that was naturally evolving." *Id.*

[114] *Id.*; *see* Letter from Jennifer Hindin, Counsel, C-Band Alliance, to Marlene H. Dortch, Secretary, FCC, GN Docket No. 18-122 (Dec. 19, 2018), Attach. at 1 ("It is critically important to note that the satellite operators would not fund the procurement of these 8 satellites solely for the purpose of maintaining their current businesses - their procurement is necessitated only by the need to clear spectrum for 5G.").

[115] *3.7 GHz Report and Order*, 35 FCC Rcd at 2425, para. 199; *see id.* at 2457-60, paras. 302-03 (requiring transition plans describing "the necessary steps for accomplishing the complete transition," including "the number of new satellites, if any, that the space station operator will need to launch in order to maintain sufficient capacity post-transition, including detailed descriptions of why such new satellites are necessary"), 305 (opportunity to comment), 309, 313 (plans will be reviewed by a Relocation Coordinator with requisite expertise); *see also id.* 2426, para. 200 (emphasizing that "compensable relocation costs are only those that are reasonable and needed to transfer *existing* operations"). Petitioners complain that there is no limit to the standard the FCC adopted: whether a new satellite would "support more intensive use of the 4.0-4.2 GHz band after the transition." Stay Pet. at 21; Petitioners' Reply at 18-19. But that is not the standard. *See 3.7 GHz Report and Order*, 35 FCC Rcd at 2425-26, paras. 199-200.

[116] Stay Pet. at 22-24; *see id.* at 2, 12.

[117] *3.7 GHz Report and Order*, 35 FCC Rcd at 2423-24, 2442, paras. 196, 241.

[118] *Id.* at 2442, para. 241 (emphasis in original).

speculative value of lost business opportunities, the Commission did not rely on the *Emerging Technologies* framework, as Petitioners suggest, but rather explained that it "has consistently limited *reimbursement* to costs directly tied to relocation."[119]

25. Nor have Petitioners shown that the Commission was wrong to conclude that Hispasat and ABS do not satisfy its definition of eligibility for payments.[120] As SES puts it, Petitioners "are not similarly situated to eligible satellite operators. Because they have *no* customers and provide *no* service in the U.S., they do not need to clear the spectrum to enable 5G deployment in the U.S. and thus will of course incur *no* transition costs."[121] Petitioners assert that Hispasat "serves several earth stations" that failed to register.[122] But, as the Commission observed, "Hispasat appears to be careful in its filings not to claim that it used the *C-band* spectrum to provide service to all those earth stations."[123] Petitioners "offer no factual response here, instead asserting only that the Commission's 'suggestion that Hispasat was fabricating its existing services was irrational.'"[124] The *3.7 GHz Report and Order* also "recites a host of facts" supporting the conclusion that ABS did not intend its satellite for United States business.[125] Petitioners complain that the Commission ignored evidence that their business model relies on delivering content and information "into and out of the United States," so that they need not "lure" United States customers and can compensate for marginal United States satellite coverage with fiber delivery to the rest of the United States.[126] This argument is belied by the SSOs' responses to the Commission's questions in May 2019, which demonstrated that none of their C-band capacity was contracted for services within the United States,[127] as well as record evidence that fiber increasingly is a substitute rather than a supplement

[119] *Id.* at 2424, n.526 & accompanying text (emphasis added).

[120] Stay Pet. at 23-24; *see 3.7 GHz Report and Order*, 35 FCC Rcd at 2442-445, paras. 241-49. Petitioners make no claims regarding ARSAT.

[121] SES Reply at 10; *see* Verizon Opp. at 17 (Petitioners' complaint "that the Commission excluded them from receiving accelerated payments" shows "that their real objection is not that the *Order* provides for additional payments, only that none flows to them.").

[122] Stay Pet. at 23.

[123] *3.7 GHz Report and Order*, 35 FCC Rcd at 2442, para. 244.

[124] Verizon Opp. at 18 (quoting Stay Pet. at 23-24).

[125] *Id.* at 18 (quoting *3.7 GHz Report and Order*, 35 FCC Rcd at 2444, para. 248) ("The notion that ABS made significant investments in launching this satellite with the specific intent of providing robust services in the United States and that it must be compensated for the loss of those investments is contradicted both by its inaction in the United States in the four-and-a-half years since it launched ABS-3A and the actual capabilities of ABS-3A to provide service outside the United States."); *3.7 GHz Report and Order*, 2402-02, para. 139 & n.393. The ability to provide service to the United States using the ABS-3A satellite is significantly limited in both geography and signal strength. As demonstrated in the ABS-3A coverage map, *see* https://www.satbeams.com/footprints?beam=8203, only the eastern-most states are capable of receiving a signal from the ABS-3A satellite. And, even where the ABS-3A beam may reach certain areas, the necessary elevation angles for many of those locations (e.g., an approximately 3-degree elevation angle from Miami) would not support a viable service. *See, e.g.*, 47 CFR § 25.205 (establishing a minimum elevation angle of 5 degrees for earth station transmissions); C-Band Alliance Comments in GN Docket No. 18-122 at 23 (July 3, 2019) (arguing a 5.4 degree elevation angle—the elevation angle that would have been necessary to see ABS's ABS-3A satellite from the proposed but unbuilt Hudson, NY location—would "render viable service highly impracticable as a technical matter"). Communications to earth stations with such low elevation angles are much more susceptible to atmospheric and terrestrial degradation of the received signal than satellites with higher elevation angles.

[126] Stay Pet. at 15.

[127] *3.7 GHz Report and Order*, 35 FCC Rcd at 2442-43, paras. 241, 243 & nn.625, 632; *see also id.* at 2442-45, paras. 242-48. Petitioners have not provided any evidence that they provide service to incumbent earth stations in (continued….)

to satellite service.[128]

C. Petitioners Have Not Shown That the Equities Favor a Stay.

26. Finally, Petitioners have not met their burden of showing that the public interest militates in favor of a stay and that others would not be harmed by a stay. They argue that grant of a stay would delay the transition only briefly, that most 5G deployments in the C-band will not occur for years under the *3.7 GHz Report and Order*'s transition schedule, and that other mid-band spectrum is or will soon be available for 5G.[129] They also argue that "*any* auction will result in dramatically reduced proceeds for the Treasury" because of the Commission's funding commitments to eligible space station operators that elect to relocate on an accelerated basis.[130] None of these arguments withstand scrutiny.

27. The Commission's actions to repurpose the C-band are an indispensable element of its overall strategy of promoting the deployment of fifth generation (5G) wireless services, with millions of jobs, and billions of dollars in economic growth and other public benefits, at stake.[131] Speed is essential to that strategy. Stakeholders "repeatedly emphasized the need to make C-band spectrum available for flexible use *as quickly as possible*, with the goal of conducting an auction of overlay licenses in the 3.7-3.98 GHz band by the end of 2020."[132] Petitioners themselves "expressed support for repurposing 300 megahertz of C-band spectrum, suggesting it could be done quickly through the use of compression technology."[133] The Commission agreed, finding that "delaying the transition of this spectrum any longer than necessary will have significant negative effects for the American consumer and American leadership in 5G."[134] Accordingly, the Commission established an aggressive schedule, with the auction scheduled to commence later this year.[135] Although the first Accelerated Relocation Deadline is not until December 5, 2021, the transition itself is already underway.[136] As one large satellite operator explains, "[c]learing

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the contiguous U.S. despite having been provided numerous opportunities to do so. *See, e.g., id.* at 2442-43, para. 243 & nn.628-30, 632.

[128] *See 3.7 GHz Report and Order*, 35 FCC Rcd at 2401-02, para. 139 (SSOs failed to explain how they plan to compete with the growing importance of fiber as a substitute for satellite delivery) and n.394 (citing to evidence in the record regarding the growth of fiber as a substitute delivery mechanism); *see also id.* at 2404, para. 143 ("incumbent space station operators have no expectation of exclusive access to a particular spectrum band and incurred no appreciable costs for use of this valuable public resource beyond investment in their own network.").

[129] Stay Pet. at 31-32; *see* Petitioners' Reply at 33-39.

[130] Stay Pet. at 31.

[131] *See 3.7 GHz Report and Order*, 35 FCC Rcd at 2345-47, 2410-11, 243, and 2435-36, paras. 3-4, 6-7, 162, 219 n.580, 226.

[132] *Id.* 2356, para. 28 (emphasis added).

[133] Letter from Scott Blake Harris, Counsel to the Small Satellite Operators, to Marlene H. Dortch, Secretary, FCC, GN Docket No. 18-122, at 1 (filed Oct. 9, 2019); Letter from Scott Blake Harris, Counsel to Small Satellite Operators, to Marlene H. Dortch, Secretary, FCC, GN Docket No. 18-122, at 1 (filed Sept. 13, 2019) ("300 megahertz of C-band spectrum could be made available for 5G within 18 to 36 months through the use of non-proprietary, readily available compression technology"). Larger satellite operators—as well as more than a dozen large C-band users—confirmed that they can continue existing operations uninterrupted using 200 megahertz. *3.7 GHz Report and Order*, 35 FCC Rcd at 2397, para. 130 & n.368.

[134] *3.7 GHz Report and Order*, 35 FCC Rcd at 2410-11, para 162; *see id.* at 2435-36, para. 226.

[135] *Id.* at 2345, para. 4.

[136] *Id.* paras. 290 (May 2020 Accelerated Relocation Election), 291 (June 2020 Public Notice announcing whether 80 percent trigger met for elections), 302 (June 2020 deadline for individual Transition Plans from eligible incumbents), 305 (July 2020 deadline for comments on Transition Plans), 311 (July 2020 deadline for search
(continued….)

the C-band is a complex, time-consuming, and costly endeavor, and SES has just committed to meet its clearance obligations on the Commission's accelerated timeline. To prepare for this election, SES has already undertaken substantial planning and other capital- and time-intensive activities."[137]

28. For these reasons, grant of a stay pending judicial review would significantly delay the auction and transition process and harm multiple stakeholders, including prospective bidders and the diverse incumbents involved in the transition process.[138] CTIA states that:

> [m]any wireless operators (including CTIA members) have structured their contractual and financial arrangements in anticipation for the upcoming auction. And their investments in next-generation technologies are predicated on the understanding that an auction *this year* will afford them opportunities to bid on and obtain critical C-band spectrum for next-generation wireless services. Similarly, wireless equipment manufacturers (also among CTIA's members) and myriad other participants in the wireless ecosystem have relied on expectations of a swift auction. Granting a stay of the upcoming auction and related clearing process established in the *Order* would upend these plans, causing tremendous uncertainty and chilling investment.[139]

The cost of such delay and disruption could be enormous. Economists estimated that one year of delay in transitioning the C-band spectrum would reduce the spectrum's value between seven and 11 percent, and reduce consumer welfare by $15 billion.[140] The Commission estimated the total amount that new

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committee to select Relocation Coordinator). All eligible space station operators elected to relocate on an accelerated basis. *See Accelerated Clearing Public Notice*.

[137] SES Americom, Inc. Opp. to Stay Pet. in GN Docket No. 18-122 at 2 (filed May 27, 2020) ("These activities include contracting for equipment, approving the purchase of long-lead satellite components, and consolidating tracking, telemetry, and control operations. SES has taken these actions, and plans to take additional necessary actions to clear on a specific schedule that will allow it to meet the Commission's accelerated deadlines."); *see* Telesat Canada Opposition to Stay Pet. in GN Docket No. 18-122 at 2-3 (filed May 27, 2020) ("Accelerated clearing of the 3700-4000 MHz band requires an intricate series of interrelated steps involving satellite transponder plans, customer frequency assignments, and ground station equipment and operations. To be able to satisfy its accelerated clearing responsibilities, Telesat already has dedicated time, personnel, and resources, including making substantial contractual commitments for the purchase of filters that will be necessary for frequency relocation; working with its earth station customers to determine their requirements for clearance; and creating a master schedule of activities that will be necessary for Telesat to complete its anticipated frequency clearance obligations in the most expeditious and efficient manner that is reasonably possible."); *see also 3.7 GHz Report and Order*, 35 FCC Rcd at 2436, para. 227 ("To accelerate clearing, each space station operator will need to engage in a complex and iterative process of coordinating between its programmer customers and incumbent earth stations, allocating resources to effectuate changes in both the space station and earth station segments of the FSS network, and orchestrating changes both in space and on the ground in order to ensure continuous and uninterrupted delivery of content."); *id.* at 2454-55, paras. 287, 292.

[138] SES Opp. at 5 ("Any stay … would bring [SES's accelerated transition] activities to a halt and prevent SES from completing them on time and without significant additional delays."); Verizon Opp. at 5-6 ("a stay pending appeal would delay [the transition process] by a year or more."); *see* Telesat Opp. at 5. Contrary to Petitioners' argument, 5G deployments can begin immediately after the first accelerated deadline on December 5, 2021. *3.7 GHz Report and Order*, 35 FCC Rcd at 2456, para. 295 & n.687.

[139] CTIA Opp. 16-17; *see Expanding the Economic and Innovation Opportunities of Spectrum Through Incentive Auction*, GN Docket No. 12-268, Order Denying Stay Motion, 31 FCC Rcd 1857, 1862, para. 12 (MB 2016) (in denying request to stay Broadcast Incentive Auction, recognizing "extensive preparations for the auction based on the current schedule, including securing financing and deferring other business plans").

[140] *3.7 GHz Report and Order*, 35 FCC Rcd at 2417-18, para. 185; *see id.* at 2420-21, para. 190; *see also id.* at 2410, para. 162 (citing estimate that delay would result in permanent losses of "about $50 billion or more per year in consumer surplus.").

licensees would willingly pay to accelerate relocation at $10.52 billion.[141] Delay also could cost hundreds of millions of dollars in lost revenues for the U.S. Treasury.[142]

29. Ignoring these estimates, Petitioners suggest that we instead focus on the end of the transition process, and that the Commission could make up any initial delays by tightening future build-out requirements and performance benchmarks for new licensees.[143] More fundamentally, they contend that we should not move forward while doubts remain regarding the *3.7 GHz Report and Order*'s validity.[144] We disagree. In addition to the above-stated public interest harms, grant of a stay would undercut the specific goal of U.S. leadership in 5G and the general goals of the auction program. "Two of the primary goals of the Commission's auction program are to ensure the development and rapid deployment of new technologies, products, and services for the benefit of the public without delays, and promote the efficient and intensive use of the electromagnetic spectrum. These goals can best be met by moving forward with the [auction] process and maintaining the announced auction schedule."[145]

IV. ORDERING CLAUSES

30. ACCORDINGLY, IT IS ORDERED, that, pursuant to sections 1, 4(i), 4(j), 201, 202, and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 154(i), 154(j), 201, 202, 303(r), and the authority delegated pursuant to sections 0.131 and 0.331 of the Commission's rules, 47 CFR §§ 0.131, 0.331, this Order Denying Stay Petition in GN Docket No. 18-122 is ADOPTED.

[141] *Id.* at 2433, para. 218.

[142] *See id.* at 2433, para. 219 & n.580. Contrary to Petitioners' argument, the FCC concluded that relocation and acceleration payments would *increase*, not decrease, auction proceeds. *Id.* And as Verizon argues, experience shows that pending litigation will not deter robust competitive bidding. Verizon Opp. at 8-9.

[143] Petitioners' Reply at 34-65.

[144] *See id.* at 36-38.

[145] *Intelligent Transportation & Monitoring Wireless LLC and AMTS Consortium, LLC*, 21 FCC Rcd 5117, 5122-23 (Wireless Tel. Bur. 2006) (citing 47 U.S.C. § 309(j)(3)(A) and (D)); *see Genesis Communications I, Inc.*, 29 FCC Rcd 4214, 4215 ¶ 3 (2014) ("[T]here is no rule or case support for the claim that auction or post-auction procedures must be delayed until all reviews and appeals are final."); *see also 3.7 GHz Report and Order*, 35 FCC Rcd at 2346, para. 6 (discussing the MOBILE NOW Act, Pub. L. No. 115-141, Division P, Title VI, § 601 *et seq.* (2018), in which Congress directed the Commission to evaluate "the feasibility of allowing commercial wireless services, licensed or unlicensed, to use or share use of the frequencies between 3700 megahertz and 4200 megahertz.").

31. IT IS FURTHER ORDERED that the May 15, 2020 Joint Petition for Stay of Report and Order and Order of Proposed Modification Pending Judicial Review of ABS Global Ltd., Empresa Argentina de Soluciones Satelitales S.A., Hispamar Satélites S.A., and Hispasat S.A. is DENIED.

FEDERAL COMMUNICATIONS COMMISSION

Donald Stockdale
Chief
Wireless Telecommunications Bureau